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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,426

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Richard A. Rafferty

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EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

04/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,426	<b>Applicant(s)</b> RAFFERTY, RICHARD A.	
	<b>Examiner</b> HUYEN D. LE	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-23, 25, 26 and 37-49 is/are pending in the application.
- 4a) Of the above claim(s) 44, 45 and 47-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-23, 25, 26 and 37-43 is/are rejected.
- 7) ☒ Claim(s) 46 is/are objected to.
- 8) ☒ Claim(s) 44, 45 and 47-49 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims 21-23, 25, 26, 37-42, 43 and 46 drawn to an invention nonelected with traverse in the reply filed on 01/22/09. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21-23, 25, 26 and 37-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoest (U.S. patent 5,970,157) in view of Haertl (U.S. patent 4,987,597).

Regarding claims 21, 22, 25, 26, 37, 38, 40 and 41, Yoest teaches an apparatus that comprises a hearing aid, a receiver tube (22, 1028 and/or 24, 124, 224, 324) removably coupled to the hearing aid (figures 4, 5, 5A, 6, 16), and an ear wax trap (42, 42', 142, 142', 242, 342), wherein the ear wax trap (42, 42', 142, 142', 242, 342) is disposed within the receiver tube (figures 3, 3A, 5A, 6, 7).

Yoest does not teach the ear wax trap (42, 42', 142, 142', 242, 342) comprising a membrane as claimed. However, providing a micro-porous membrane for an ear wax trap in the hearing aid is known in the art.

Haertl et al. teaches a micro-porous membrane (14) that comprises foamed and stretched polytetrafluoroethylene for an ear wax trap, and the membrane (14) that is waterproof as claimed (col. 2, lines 3-11, col. 3, lines 11-33).

Therefore, it would have been obvious to one skilled in the art to provide the ear wax trap, as taught by Haertl, in the ear wax barrier of Yoest for better protecting the hearing aid against the penetration both of earwax as well as moisture.

Regarding claims 23 and 39, Haertl does not specifically disclose the micro-porous membrane (14) containing the pores as claimed. However Haertl does teach that the micro-porous membrane (14) has the extremely small pores (col. 2, lines 3-7).

Therefore, it would have been obvious to one skilled in the art to provide any range of extremely small pores in the membrane (14) of Haertl such as 9 billion pores per square inch for better protecting the hearing aid against the penetration of moisture.

Regarding claim 42, Yoest teaches a receiver (16, 824, 1018) having an opening (20, 1026), wherein the receiver tube (22, 1028) is removably coupled to the receiver (figures 4, 5, 5A, 6, 16).

Regarding claim 43, as broadly claimed, Yoest shows a locking mechanism for selectively coupling the receiver tube (22, 1028 and/or 24, 124, 224, 324) to the receiver as claimed (figures 4, 5, 5A, 6, 16).

***Allowable Subject Matter***

4. Claim 46 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Applicant's arguments with respect to claims 21-23, 25, 26 and 37-43 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUYEN D. LE/  
Primary Examiner, Art Unit 2614

HL  
April 4, 2009